

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

REGINA MARSTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-08-243-D
	)	
CHECK AND MERCHANT SERVICES,	)	
d/b/a MCS SERVICES, INC.,	)	
	)	
Defendant.	)	

**ORDER OF DISMISSAL**

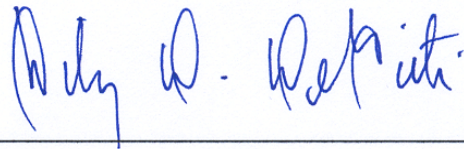
By Order of November 4, 2008, the Court directed Plaintiff to show cause for her failure to effect service of process in a timely manner or, if she believes proper service was accomplished, to proceed with her case. Plaintiff has failed to respond or otherwise comply with the Order. Plaintiff's lack of response in this instance, as well as her inadequate responses to prior orders, have prevented this case from moving forward.

"The 'authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an inherent power, governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *United States ex rel. Jimenez v. Health Net, Inc.*, 400 F.3d 853, 855 (10th Cir. 2005) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)). A dismissal for failure to prosecute "should be imposed only after careful exercise of judicial discretion," but it presents "an appropriate disposition against a party who disregards court orders and fails to proceed as required by court rules." *Id.*; see also *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1143 (10th Cir. 2007) (discussing dismissal for failure to prosecute under Fed. R. Civ. P. 41(b)). Here, the Court finds that Plaintiff's disregard of the November 4 Order and her general inaction in

the case, pending for more than eight months, warrant a dismissal of the action without prejudice to refiling. The Court further finds that Plaintiff has failed to show proof of timely service of process on Defendant, and thus dismissal without prejudice is proper under Fed. R. Civ. P. 4(m).

IT IS THEREFORE ORDERED that this action is DISMISSED WITHOUT PREJUDICE to refiling.

IT IS SO ORDERED this 20<sup>th</sup> day of October, 2008.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE